contributory negligence as a matter of law. *Atchinson, T. & S. F. R. Co. v. Tindall,* 57 Kan. 719; *Quirouet v. Alabama Great Southern R. Co.,* 111 Ga. 315. The above is well illustrated in *Lothrop v. Fitchburg R. Co.,* 150 Mass. 423, where the court held as a matter of law that a brakeman, who, in attempting to couple from the north side of the track two flat cars of timbers, which on that side dangerously projected toward each other, was killed by having his head caught between the timbers, did not exercise due care, as the danger would have been avoided if he had stooped or coupled from the south side of track. In other jurisdictions, different facts have caused the courts to hold that the adoption of a dangerous way of accomplishing a task when a safe way is open to him is not necessarily negligence, but is a question of fact for the jury. *Gibson v. Burlington, C. R. & N. Ry. Co.,* 107 Ia. 596; *Norton Bros. v. Sczpurak,* 70 Ill. App. 686; *Flutter v. N. Y., Chicago & St. L. R. Co.,* 27 Ind. App. 511.

MASTER AND SERVANT—INJURY TO SERVANT—FELLOW SERVANTS—CONTRIBUTORY NEGLIGENCE.—DAVIDSON V. FLOUR CITY ORNAMENTAL IRON WORKS, 119 N. W. 483 (MINN.).—The duties of an operator required him to change the emery wheels from time to time to meet the exigencies of the work, and in making these changes it was necessary to remove a guard. This he negligently failed to replace, and the revolving wheel injured respondent. *Held,* that the operator and respondent were not fellow servants, that the defenses of contributory negligence and assumption of risk were not applicable, and that appellant was responsible for failure to maintain the guard. Elliott, J., *dissenting.*

It has been held that all serving a common master and working under the same control, deriving their authority and compensation from the same source, and engaged in the same business, although in different departments, are fellow servants and take the risk of each other's negligence. *N. & W. R. R. Co. v. Donnelly,* 80 Va. 853. And that the master's liability depends on his exercise of reasonable care to ascertain the competency of his servant, whose negligence caused the injury to the other servant. *Nordyke & Marmon Co. v. Van Sant,* 99 Ind. 188; *Norfolk & W. R. Co. v. Nuckols,* 91 Va. 193. But by the weight of authority the true test to determine whether the negligent act causing the injury is chargeable to the master, is, was the negligent employee in the performance of the master's duty, or charged therewith? If so his negligence is that of the master and the latter is liable, otherwise it is theact of a co-servant. *Colley on Torts,* Stud.'s Ed. 553; *Lewis v. Serfert,* 116 Pa. 628. Another test is, did the injury result from the negligence in performing personal duties, which the master cannot delegate. *Koosorowska v. Glasser,* 8 N. Y. Supp. 197; *Enright v. Olliver & Burr,* 69 N. J. L. 357.

MASTER AND SERVANT—PERSONAL INJURIES—"RES IPSA LOQUITUR"—KEENAN V MCADAMS & CARTWRIGHT E. CO., 113 N. Y. Supp. 343.—*Held,* that the rule of *res ipsa loguitur* cannot be applied, where no negligence